

Fiscal Services Division
Legislative Services Agency
Fiscal Note

HF 619 - Sex Offender Registry, Supervision, and Data Base Task Force (LSB 2527 HV.1)

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Fiscal Note Version – Amendment S – 3185

Description

Amendment S – 3185 strikes everything after the enacting clause in HF 619. The amendment relates to persons convicted of criminal offenses requiring registration on the Sex Offender Registry, requiring additional offenders to submit a DNA sample for DNA profiling, requiring sex offender treatment plus an additional term of parole, enhancing penalties for certain sex offenses, establishing a Sex Offender Treatment and Supervision Task Force. The provisions related to DNA profiling take effect upon enactment of the legislation.

Background

1. Under current law, sex offenders who commit violations of Sections 709.2, 709.3, 709.4, and 709.11, Code of Iowa, must provide a DNA sample.
2. The Amendment requires the following offenders to submit a sample for DNA profiling: sexual predators, juveniles adjudicated as delinquent for offenses that require DNA profiling of an adult offender, those found not guilty by reason of insanity, those receiving a deferred judgment for a felony, or where a judgment for a felony has been entered, those offenders required to register on the Sex Offender Registry, and all felons. In FY 2004, there were 263 sex offenders released from prison of which, approximately 139 offenders had not had a DNA sample taken. There were 227 probation admissions for sex offenses of which, approximately 120 offenders had not provided a DNA sample.
3. In FY 2004, there were 212 juveniles adjudicated delinquent under the mandated offenses for DNA profiling, and 282 adults, including those with deferred judgments. The additional number of sexually violent predators who would be subject to providing a DNA sample under the Amendment is anticipated to be minimal. Insanity pleas are rare and are not likely to increase the number of samples taken.
4. DNA sampling of all felons will result in a significant expansion in the number of samples taken. For example, in FY 2004, 4,096 juveniles were adjudicated delinquent for felony offenses, and 8,479 adults were convicted of felony offenses.
5. The cost for a DNA collection kit, analysis of a DNA sample, and development of a DNA profile is approximately \$45 per sample. The Department of Public Safety (DPS) provides the DNA testing kits. The DPS estimates the cost for DNA testing of all felons to be \$1.1 million the first year, \$652,000 the second year, and \$480,000 in the third year. Costs include ongoing operating costs, such as additional staff and DNA test kits, plus one-time equipment costs, such as genetic analyzers. The cost is based on all felons currently on supervision providing a DNA sample, plus new felony convictions each fiscal year.
6. The Amendment imposes a graduated system of penalties for criminal offenses related to DNA profiling. The average State costs for one aggravated misdemeanor conviction ranges from \$1,100 to \$5,700. The average State costs for one Class D felony conviction ranges from \$2,800 to \$12,000. These costs will be incurred across multiple fiscal years while the offender is supervised in the correctional system.
7. The correctional and fiscal impacts of the new penalties related to DNA testing are not anticipated to be significant.
8. The Amendment permits certain defendants to make a motion to the court to require DNA analysis of evidence. This provision may cost \$2,300 per motion for court costs (\$1,300) and indigent defense (\$1,000). There will be a limited number of cases under this provision.
9. The Sex Offender Registry was created in 1995 by the Sex Offender Registry Act.

10. The current budget for the Sex Offender Registry is \$524,000, which includes 3.0 special agents and 5.0 civilian employees.
11. As of March 1, 2005, there were 6,427 offenders on the Sex Offender Registry. There are also 1,054 offenders registered as out-of-State offenders. An offender remains on the Registry for a minimum of ten years and in some instances, life-time registration is required.
12. As of March 30, 2005, there were 1,099 sex offenders in prison; 39 of these offenders violated the Sex Offender Registry requirements. Of the 1,099 offenders, 211 or 19.2% are repeat offenders. The previous incarceration may or may not have been for a sex crime.
13. The Amendment prohibits sex offenders from living within 1,000 feet of a school or day care center. There are 5,902 registered day care centers in Iowa. There are 1,532 public and 194 private schools in Iowa. The Amendment imposes an aggravated misdemeanor penalty for violating residency requirements.
14. Under the Amendment, offenders are not eligible for earned time reduction of sentence unless they participate in and complete a sex offender treatment program. Approximately 50.0% of sex offenders in prison refuse sex offender treatment and/or are released without supervision due to the expiration of their sentence while in prison. The current prison-based sex offender treatment program is 15 months.
15. In FY 2004, there were 35 misdemeanants sentenced to prison. The average length of stay for a misdemeanant sex offender is seven to 15 months. Since the length of the sex offender program is 15 months, misdemeanants are prevented from participating in the sex offender treatment program.
16. The current sex offender treatment budget for prison is \$693,000. The Department of Corrections (DOC) estimates an additional \$355,000 is required to meet current demand for treatment.
17. On March 1, 2005, there were 636 offenders under Community-Based Corrections (CBC) supervision in field services (parole, probation, interstate compacts, and pre-trial release). The Amendment permits the DOC and CBC District Directors to place offenders in field services on electronic monitoring.
18. Current treatment budgets in CBC are \$2.6 million. The DOC estimates an additional \$864,000 is required statewide to meet current demand for treatment, plus \$19,000 to treat aggravated misdemeanants. Cost for sex offender treatment is \$7.04 per day, per offender.
19. The Amendment enhances the penalty for lascivious acts with a child from a Class D to a Class C felony, for certain acts; the age of the offender is lowered from 18 to 16 years of age. Lowering the age of the offender is not anticipated to have a significant correctional or fiscal impact.
20. The Amendment creates a new Class A felony. If an offender commits a second or subsequent offense for sexual abuse in the second or third degree, or lascivious acts with a child, or any combination thereof, then the penalty is a Class A felony (life in prison).
21. Enhancing penalties increases the average length of stay in prison and the incarceration rate (number of offenders sentenced to prison). The average length of stay in prison for a sex offender is as follows: 7 months for serious misdemeanants, 15 months for aggravated misdemeanants, 32 months for Class D felons, and 61 months for Class C felons. This average includes earned time credit. The prison incarceration rate for sex offenders is as follows: 14.4% for aggravated misdemeanants, 51.5% for Class D felons, and 74.2 % for Class C felons.
22. The marginal cost per day for State prisons is \$13 per inmate.
23. The cost of a Parole/Probation Officer II is \$51,100. The cost of a Parole/Probation III is \$57,000.
24. The Amendment mandates that local law enforcement take certain actions if a peace officer believes that a sexual assault has occurred. The actions include remaining in the dwelling unit where the alleged assault occurred or assisting the victim in leaving the dwelling, assisting the victim in obtaining medical treatment, and providing notice to the victim of his or her rights. There may be additional costs at the local level due to increased staff time or office supplies (creating and printing a notice). These costs are anticipated to be minimal.
25. The Amendment permits the Victim Information and Notification Everyday (VINE) to be established. Implementation of the system is not mandated.

26. The VINE system is estimated to cost approximately \$493,000 statewide the first year, and approximately \$500,000 annually thereafter. This amount does not include any third-party vendors, where a software company charges a fee to provide access to the VINE system. This cost is estimated to be approximately \$120,000 statewide. This amount includes \$20,000 for access to the Iowa Corrections Offender Network (ICON) system used by the Department of Corrections (DOC). Federal funds may be available in future fiscal years to implement the system. However, funding availability is not known at this time.

Assumptions

1. FY 2004 offender-based convictions were used to estimate the number of future offenders.
2. Charge, conviction, and sentencing patterns and trends will not change over the projection period.
3. The law will become effective July 1, 2005. A lag effect of six months is assumed, from the law's effective date to the date of first entry of affected offenders into the correctional system.
4. The cost to re-work and enhance the Sex Offender Registry web site would be approximately \$25,000 to update the programming (one-time cost, including an e-mail list serve) and \$62,000 for an Information Technology Specialist 1 (web master). Within ten years, the Registry is estimated to double in size. The cost to maintain photos and addresses on the web site for the additional years under the Amendment requires the addition of two Information Technology Specialists and a Clerk Specialist. The cost for these positions is \$110,000.
5. An electronic monitoring bracelet based on radio frequency technology costs \$2.87 per day, per offender. (This bracelet monitors an offender in a specific area, such as their home.) A global positioning system (GPS) bracelet costs \$4.75 per day, per offender. (This bracelet monitors an offender throughout the community.) CBC District Directors will place all sex offenders in field services on electronic monitoring, contingent upon funding for bracelets and staff.
6. The Amendment creates a special sentence of a life term, with parole eligibility, for Class C and Class B felony convictions for any sexual abuse offense under Chapter 709, Code of Iowa, and sexual exploitation of a minor. Class D felony and misdemeanor offenders convicted of sexual exploitation of a minor, incest, or any sexual abuse under Chapter 709, Code of Iowa, will receive a special sentence of an additional term of parole of ten years. Offenders will serve time in prison or time on probation before these special sentences take effect. Therefore, the correctional impact first occurs in FY 2008, after the current sentence is served.
7. The legislation permits early discharge from the special sentence. Under current law, the Board of Parole does not usually discharge sex offenders early from supervision. This analysis assumes the Board will continue this practice and will not allow early discharge.
8. Life time parole calculations do not include information on Class B felons. The current length of stay in prison for these offenders is 141 months (11.75 years). They will not be released from prison to this new supervision for at least 11.75 years; which is beyond the scope of this analysis (ten years).
9. Under current law, certain sex offenders serve the entire sentence in prison and are not supervised in the community. A certain percentage of these offenders will return to prison whether or not the Amendment is enacted. These offenders and their return to prison are not included in this analysis.
10. Offenders who fail to comply with the new term of parole are revoked to prison for no more than two years for the first offense, and five years for the second or subsequent offenses. Offenders could be revoked more than once, under the proposed legislation. For the purpose of this analysis, offenders are revoked only once over the ten-year projection period.
11. Current return to prison rates were used to project the number of offenders who would be revoked to prison from the additional term of parole in the Amendment.
12. Offenders released under the additional term of parole, either life or ten years, may be electronically monitored under the Amendment. Offenders on electronic monitoring are

supervised at the intensive supervision level – no more than 30 offenders per Probation/Parole Officer (PPO III).

13. The Board of Parole will require additional resources, an Administrative Law Judge and a clerk, due to the increased workload associated with extended parole supervision.
14. Fiscal Year 2004 convictions are used for calculating the impact of increasing the penalty for lascivious acts with a child from a Class D felony to a Class C felony, for certain acts.
15. In calculating the impact of the new Class A felony, it is assumed these offenders are currently sentenced to prison for Class C felony convictions. Therefore, the correctional impact does not occur until the current Class C felony sentence is served. Using current length of stay data, the impact of the new Class A felony will occur in FY 2011.
16. In FY 2004, the following sex offenders were sentenced to prison: 4 serious misdemeanants, 31 aggravated misdemeanants, 51 Class D felons, and 89 Class C felons. Under current law, 25 of the Class D felons are receiving sex offender treatment. An additional 26 Class D felons are estimated to be in need of treatment. Of these, approximately 50.0% or 13 felons will accept treatment while the remaining 50.0% will refuse treatment.
17. Since misdemeanor sex offenders are not in prison long enough to participate in the sex offender treatment program, the DOC plans to create a shortened treatment program for these offenders to meet the current length of stay in prison. Follow-up treatment in CBC is required to complete the full program.
18. If all sex offenders in prison are required to participate in a sex offender treatment program in prison, the estimated cost increase is \$1.0 million. This includes \$355,000 for the current shortfall for sex offender treatment. The estimated \$1.0 million also includes \$645,000 for additional sex offender treatment plus increased operating costs related to increased length of stay for those who refuse treatment. Sex offenders only accrue earned time if they participate in treatment.
19. The Amendment requires the Criminal and Juvenile Justice Planning Division (CJJPD) of the Department of Human Rights to establish a Sex Offender Treatment and Supervision Task Force. The cost for staffing the Task Force is estimated to be \$75,000 annually. This amount includes additional staff time (a portion of a Statistical Research Analyst and a portion of a Justice Systems Analyst) plus supplies and support costs.

Correctional Impact

There may be a significant increase in convictions and incarcerations for the new aggravated misdemeanor term for the requirement that a person cannot reside within 1,000 feet of a public or nonpublic elementary or secondary school or child care facility. It is estimated that the 1,000 foot rule would place up to half of the State of Iowa off limits to housing for sex offenders. If no acceptable location in the community can be located, sex offenders granted parole may be required to remain in prison, which may increase the length of stay resulting in an increased prison population and correctional impact.

Under the provision of a special sentence of parole, there is no correctional impact in FY 2006 or FY 2007 because offenders are serving their term in prison or on probation. The chart below shows the estimated number of offenders who will receive a special sentence of parole of either life or ten years.

CBC - Additional Sentence to Parole

	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2010</u>	<u>FY 2011</u>	<u>FY 2012</u>	<u>FY 2013</u>
Lifetime	0	0	0	0	176	359	536	716
Ten Years	0	0	298	599	901	1,204	1,507	1,810
	<u>0</u>	<u>0</u>	<u>298</u>	<u>599</u>	<u>1,077</u>	<u>1,563</u>	<u>2,043</u>	<u>2,526</u>

Under the provision of mandated treatment in prison plus the loss of earned time, Class D felons will serve 28 additional months in prison because they refused treatment. Under current law, they will serve 32 months in prison. Under this legislation, they will serve 60 months in

prison. Therefore, the correctional impact will occur in FY 2008, the third year after the effective date of this legislation.

There will be an increase in the number of sex offenders who will receive treatment in prison and CBC under the Amendment. This increase includes those offenders in prison who accept treatment, but need to complete treatment upon their release from prison. The increase also includes those offenders who are currently on correctional supervision.

The chart below shows the projected growth in the prison population under the Amendment. The increase is due to implementation of a new Class A felony, loss of earned time for refusing treatment, enhancement of certain provisions related to lascivious acts with a child, and the additional special sentence of parole.

Correctional Impact - Prison Population Increase

	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Offenders	0	0	54	103	171	232	270	319

On an annual basis, there will be an estimated 13 additional offenders serving life in prison under the Amendment. These offenders would be serving a prison sentence for a lesser offense under current law; therefore, the correctional impact does not occur until the current sentence would be served. Using current length of stay data, the impact of the new Class A felony will occur in FY 2011.

There will be an estimated 45 new Class C felony convictions under the enhanced penalties for lascivious acts with a child. These offenders are Class D felons under current law. Approximately 74.2% of these offenders will be sentenced to prison as Class C felons, as compared to 51.5% of Class D felony sex offender convictions resulting in a prison sentence.

Regarding loss of earned time for refusing treatment, the impact on prisons after FY 2010 will be substantial as Class C offenders begin to lose earned time, and spend more time in prison.

Fiscal Impact

The overall fiscal impact of the Amendment for FY 2006 is estimated to be \$5.8 million and in FY 2007, costs are estimated to be \$6.3 million. Costs will continue to increase in future fiscal years due to anticipated increases in costs for the correctional system, prosecution, and defense.

Fiscal Impact

Department	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Board of Parole	\$ 0	\$ 106,000	\$ 106,000	\$ 106,000	\$ 106,000
Public Safety	1,276,000	824,000	652,000	652,000	652,000
Human Rights	75,000	75,000	75,000	75,000	75,000
Corrections	3,710,000	3,843,000	4,697,000	5,500,000	6,734,000
State Public Defender	354,000	709,000	729,000	784,000	949,000
Judicial Branch	19,000	38,000	38,000	38,000	38,000
Prosecution	354,000	709,000	729,000	784,000	949,000
Total Costs	\$ 5,788,000	\$ 6,304,000	\$ 7,026,000	\$ 7,939,000	\$ 9,503,000

Prosecution costs will be incurred by either the Office of the Attorney General or the general fund of the county where the offense occurred.

The fiscal impact does not include additional costs to the court system and prosecution and defense attorneys for any potential constitutional challenges. Each challenge may cost an

additional \$10,000 to the Attorney General's Office, \$10,000 to the State Public Defender's Office or the Indigent Defense Program, and \$42,000 for the Judicial Branch.

Sources

Department of Corrections
Department of Human Rights, Criminal Juvenile Justice Planning Division (CJJP)
Department of Public Safety
Judicial Branch
Office of the State Public Defender
Office of the Attorney General

/s/ Holly M. Lyons

April 28, 2005

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.
